

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*
Plaintiff,	*
-v- 11-CR-264	*
JULIUS DeSIMONE, et al.,	*
Defendants.	*

Transcript of Rebuttal Summation regarding the
above-referenced matter, held before the Honorable David N.
Hurd, United States District Court Judge, at the Alexander
Pirnie Federal Courthouse, 10 Broad Street, Utica, New York,
on October 12, 2012.

APPEARANCES: U.S. Department of Justice
601 D Street NW, Suite 8000
Washington, DC 20004
By: Todd W. Gleason, Esq.

ANGELO MUSITANO, ESQ.
Attorney for Cross Nicastro
324 Pine Avenue
Niagara Falls, New York 14301

PAUL B. BRICKFIELD, ESQ.
Attorney for Dominick Mazza
70 Grand Avenue, Suite 102
River Edge, New Jersey 07661

ROBERT ZELLER, ESQ.
Attorney for Mazza & Sons, Inc.
25 East Salem Street
Hackensack, New Jersey 07601

U.S. v DeSimone, et al. - 11-CR-264

1 THE COURT: Testimony rebuttal summation,
2 if any.

3 MR. GLEASON: Please. Well, folks, as I
4 warned you this morning, you heard the facts of the case
5 from the United States and you heard excuses from the
6 defendants. Folks, over the last couple hours there have
7 been a lot of excuses and there's been a fair amount of
8 mud slinging at the prosecution and the investigation
9 team.

10 Well, folks, let me go through and submit
11 to you, ignore that. Ignore all of it. Concentrate on
12 the evidence. The facts. The testimony. You'll get to
13 the right place. There are a few arguments that were
14 made by various defense attorneys that I do feel I need
15 to address specifically, and I'm going to do my best to
16 go through that quickly. I know you heard a lot of
17 people talking to you today. You heard a lot of people
18 bloviating for quite awhile so I will just make this fast
19 if I can.

20 With respect to defendant Nicastro, well,
21 first thing I'm struck by is the length to which
22 defendant Nicastro is going to run away from his own
23 grand jury testimony. It is his own sworn statements,
24 and they're sprinkled throughout here, they're addressed
25 in numerous places. First, Nicastro's attorney said, did

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 anyone say that Cross Nicastro met with others? Sure.
2 Cross Nicastro did in his grand jury testimony. He
3 wasn't in every meeting. Quote-unquote. He didn't need
4 to be, folks. He doesn't need to be at every single
5 meeting but he's admitted he was at multiple meetings.
6 Meetings where they discussed the extent of the filling,
7 the money that was going to be exchanged, how they were
8 going to go about doing that, the fact that they were
9 going to use a bulldozer. All those things.

10 There's another question posed by counsel.
11 Why wasn't defendant Nicastro invited to a specific
12 meeting with Pat Stamato. Again, he doesn't need to be
13 at every meeting to establish a conspiracy. I'll submit
14 to you that the reason he wasn't at this particular
15 meeting was because, as Patrick testified, the minute Pat
16 Stamato saw him on site, he said to Cross Nicastro, "What
17 you are dumping there is illegal." Mr. Nicastro got
18 upset and stormed off the site. That's why he didn't go
19 to the meeting.

20 Now, defendant Nicastro's attorney also
21 talked to you extensively about the filling agreement.
22 Well, the essence of the agreement between the parties
23 here, folks -- again, I need to stress this to you. It
24 was an agreement to illegally fill this site for the
25 exchange of money, to make and save money, and the

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 filling agreement itself specified that and I've noticed
2 through the course of my career that when an attorney
3 knows that their clients are incriminated by a particular
4 document, they tend to try to adopt it as their own in
5 closing argument and that's exactly what Mr. Musitano did
6 here with Government Exhibit 18, which is the filling
7 agreement. He stated, for instance, the filling
8 agreement didn't say they were dumping for five years,
9 even though it was a five-year term. Folks, read the
10 contract. The whole contract was about dumping on the
11 site. It didn't deal with anything else. What was the
12 five-year period relevant to if not the dumping?

13 Likewise, there was a lot of questions
14 about the analyticals. Everybody keeps claiming that
15 there were these analyticals that were bouncing around
16 saying the site was clean. The burden is obviously on
17 the United States and we readily accept that burden, but
18 the defense is free to put in whatever documents they
19 choose. Where are the analyticals? These famous
20 analyticals that everybody kept saying the materials were
21 clean? They are not here.

22 Mr. Nicastro claims that he never knew
23 there was asbestos. It's not what he's charged with
24 here, folks. We have never submitted to you that
25 defendant Nicastro knew that Mazza was going to be

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 bringing up contaminated materials. What he's charged
2 with here is a Clean Water Act conspiracy.

3 Now, when the judge gives you the jury
4 instructions, there's going to be a section on the
5 conspiracy and the knowledge intent. There's a -- right
6 after he reads the knowledge intent, we anticipate there
7 will be a supplemental instruction dealing with knowledge
8 as it pertains to the Clean Water Act and Superfund
9 counts. Read it carefully, folks. Listen carefully.
10 Talks about ignorance of the law not being an excuse.

11 Doesn't matter if the clean -- if the fill
12 being dumped there is clean or not, folks. Doesn't
13 matter if it was perfectly clean and if it looked great.
14 Fact of the matter is, both Josh Frost and the
15 defendants' own expert testified you still need an Army
16 Corps of Engineers permit to fill the site if you were
17 going to get into the wetlands. That's the fact of the
18 matter, and that brings me to the next matter.

19 The wetlands. There was an astonishing
20 comment made by both counsel with respect to their own
21 expert. I'm not sure why and I believe the quote went
22 something like, there were no wetlands on the site
23 according to Mr. McMullen. Apparently we weren't
24 listening to the same testimony. Mr. McMullen testified
25 that the wetland boundary, documented by Joshua Frost,

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 were accurate. That's what he said. And certainly,
2 likewise, defendant Nicastro's counselor said, did anyone
3 say Cross Nicastro agreed to fill wetlands? No, he
4 agreed to fill the soggy areas on his property that
5 contained the wetlands. You can call them whatever you
6 want. They are wetlands.

7 Likewise, you heard counsel for the Mazza
8 defendant say we slimed the jury. That's the direct
9 quote. We slimed the jury. We threw dirt in the jury
10 box because we said Josh Frost wasn't around, able to dig
11 around in the fill pile -- pad deposited by the
12 defendants. Josh Frost testified he didn't want to
13 expose his people to the health risks associated with the
14 asbestos pile. That's a fair comment. He didn't
15 delineate this. Nobody did a field delineation on the
16 actual fill pad. They had to rely on aerial photography.
17 It doesn't matter.

18 The fact of the matter was, it was a
19 five-year exclusive contract. They had nowhere else to
20 go. Eastern boundary was already filled, all they could
21 do is go west. Going west puts you into the wetland. It
22 was a conspiracy to violate the Clean Water Act, not a
23 substantive Clean Water Act count.

24 Mr. Nicastro's attorney said, quote, it's
25 preposterous to think somebody would build a restaurant

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 there. Could we please have Government's Exhibit 5-U.
2 Submit to you, members of the jury, it's preposterous to
3 think that somebody's still farming in materials that
4 look like that. That's absolutely ridiculous. If he
5 wasn't, what was he using the site for? Certainly wasn't
6 agricultural anymore. Another excuse. You can take that
7 down.

8 Someone told defendant Nicastro there was
9 a permit. George Luther said there was a permit. Other
10 people told him there was a permit. Well, folks, let me
11 tell you. When I was in high school the excuses that got
12 my through was, I don't know, I don't care, somebody told
13 me I could do that. That got me through high school
14 unscathed. Well, that's the same excuse the defendant
15 Nicastro is using right now. Somebody told me it was
16 okay. Somebody told me it was fine. Folks, it's his
17 property. You're not going to go figure out if you have
18 a permit to fill your own property, you're going to rely
19 on words of somebody else? It's just not a good excuse.

20 He never got a copy of the fraud letter.
21 That's another excuse that defendant Nicastro's broken.
22 He didn't need it. All he cared about was billing the
23 property and that's the portion of the conspiracy with
24 which he's charged. He didn't need to be involved in
25 every aspect of the conspiracy and the dumping started

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 well before there was even a semblance of a permit on the
2 property. As a matter of fact, before there was a
3 permit, there were 310 loads dumped on that property,
4 totaling 13,000,690 pounds of waste before there was ever
5 even the notion of getting a permit.

6 Defendant Nicastro said he didn't make
7 much money. Well, he didn't make much money because he
8 got caught early on in this criminal conspiracy.
9 Regardless, he contracted to make a lot of money.

10 You're also seeing another common theme
11 here. Blaming other co-conspirators. George Luther
12 dumped there. So did Cross Nicastro. According to his
13 grand jury testimony, he dumped at the site for more than
14 20 years.

15 Counsel said that George Luther has a
16 cooperation agreement. That's actually not accurate at
17 all. He has what's called a proffer agreement. It's a
18 letter of immunity for one day and one day only. He has
19 no other promises and it wasn't for his testimony here in
20 front of you. He hasn't had any promises from the United
21 States for years.

22 They're claiming Butch Luther's attorney,
23 Longeretta -- we keep hearing that name. Longeretta is
24 either completely inept or was complicit in this crime
25 and all the evidence appears to point to the latter.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 There's been unindicted co-conspirators. Through the
2 course of this trial it sure looked like we have got
3 another unindicted co-conspirator.

4 There is a question posed. Why would an
5 attorney prepare a contract for his brother-in-law that's
6 criminal? Well, first -- this is very important,
7 folks -- they didn't execute that filling agreement until
8 the dumping was already underway. They had already been
9 dumping on the site for -- by the time they executed that
10 contract. Longaretta prepared that contract to give this
11 site the appearance of legitimacy and to maximize the
12 amount of money his -- his brother-in-law was going to
13 get.

14 Fair question that Mr. Musitano asked.
15 Why is Mr. Longaretta sending all these letters to DEP
16 after the fact? Letters that are inconsistent with what
17 Luther testified to. I submit to you that's because he
18 knows full well he's implicated in a Superfund site and
19 is trying to cover his own -- you know what he's trying
20 to cover. Besides, this is hardly the first time, folks,
21 an attorney has been implicated in a crime. Keep that in
22 mind.

23 Julius DeSimone. Lot of attacks on Julius
24 DeSimone and don't believe a word Julius DeSimone says
25 unless it's corroborated by other evidence. Mr. Musitano

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 mischaracterizes what the plea agreement actually said.
2 If the judge lets it go back into the jury room with you,
3 read it. Read the plea agreement, what his objections
4 actually are and I'll leave it at that.

5 Mr. Musitano says Mr. Nicastro has always
6 been -- been -- I think he used the word consistent.
7 He's never concealed anything. I will agree he's
8 consistent. He's been consistently guilty. He wasn't
9 charged early on. He wasn't charged early on because
10 there wasn't adequate evidence early on. Things develop
11 over time in a criminal investigation.

12 What changed was sampling of documents,
13 financial agreements, things like that that were gathered
14 over time. That's why he got charged. Mr. Musitano said
15 that Mr. Nicastro didn't conceal. Well, he actually did
16 conceal because, as I mentioned, contract wasn't executed
17 until after the dumping started. That was an attempt to
18 shroud this site with sort of a cover of legitimacy.

19 Here's another fact for you; 98 loads were
20 dumped before that contract was even executed and it
21 totaled more -- it totalled close to 5 million pounds of
22 waste that were dumped before there was even an agreement
23 executed. If he really thought this was a legal
24 landfill, why didn't he advertise it? Why didn't he put
25 up a clean fill wanted sign? Why didn't he do that? He

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 didn't.

2 And, lastly, Mr. Nicastro denied knowledge
3 of illegality when he spoke to Mr. Derx. I'm sure we can
4 all imagine Special Agent Derx's surprise when he heard
5 the target of the criminal investigation was claiming
6 that he didn't do it. It's probably the first time in
7 his 15-year career that's ever happened.

8 Now, I will move to Mazza defendants and
9 I'm going to try to deal with this all at once, that way
10 speed things along. First thing I'm going to ask you,
11 how many different people need to be lying for the Mazza
12 defendants theory to be correct? Investigator Clarke
13 needs to be lying. Agent Derx needs to be lying. Fulton
14 Williams needs to be lying. Officer Schoonover needs to
15 be lying. Brandi McPeak needs to be lying. New Jersey
16 Department of Environmental Protection Agency needs to be
17 lying. Ron Feehan needs to be lying, according to them.
18 A lot of people that need to be lying.

19 They discussed asbestos at some length.
20 They discussed in terms of the CERCLA charge, the
21 Superfund count. They say at one point there's no direct
22 evidence that Dominick put asbestos in the trucks. Well,
23 that contradicts the testimony of Investigator Clarke,
24 Mr. Schoonover, Mr. Loffredo, Mr. Williams.
25 Mr. Williams, who had a direct conversation with

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 Mr. Mazza, testified they were consistently seeing
2 hundreds of pounds in Mazza and Son's shipments. They
3 likely said like DeSimone and -- and one point said Mazza
4 material looked excellent. Well, that's in direct
5 contradiction to what Brandi McPeak said. She said the
6 material was routinely generated through the horizontal
7 grinders and it was pulverized C and D materials.
8 Likewise, Derx and NEIC talks about the condition of the
9 materials.

10 Next, like to move on to their arguments
11 regarding the conspiracy. They ask the question, What
12 evidence is there in this trial that there was an
13 agreement? Well, again, look at Defendants' Exhibit 3-A.
14 Look at the money trails here, folks. They all point to
15 an agreement between Deck, Torriero, Marangi, Mazza.
16 Defense Exhibit 3-A, Dominick Mazza thought this was so
17 legitimate, look at the address line. The address line
18 is to his site in Florida. He's a speed reader, he
19 glances over it quickly. Look at the address line. He
20 thought he was sending material to a site in Upstate
21 New York where the address line is actually to Florida.
22 How carefully did he need to read the document to realize
23 it was a site in Florida, allegedly on that particular
24 fraud permit?

25 Likewise, read the language of the fraud

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 letter. It specifically prohibited what Mr. Mazza
2 shipped. Likewise, Mr. Brickfield made a comment. He
3 drew an analysis. The bank robber analysis. If a guy
4 walks into your office and he's wearing a ski mask and
5 he's got a machine gun and you stand up and you walk out
6 with him and you go to the bank, you joined the
7 conspiracy. Well, folks, I submit to you that's exactly
8 what happened here.

9 Dominick Mazza was having trouble getting
10 rid of material at his -- at his Mazza and Son facility.
11 John Deck walked in, doesn't need to be a spoken
12 agreement, they both knew what was going on. Mazza
13 shipped -- shipped the materials based on that. He
14 walked out with a ski mask on.

15 Likewise, acts of concealment. This was
16 really still legitimate, if he really thought this was on
17 the up and up, why are there so many acts of concealment?
18 Mr. Brickfield got up here and waved around a Monmouth
19 County filing. You didn't see him waving around the New
20 Jersey DEP filing where the October report omits Tannery
21 Road. You don't see him up here trying to explain away
22 the two tickets that I showed you in the closing this
23 morning and to Mr. Mazza yesterday. The scale ticket
24 that lists Tannery Road and in the corresponding
25 environmental form that says it's Pennsylvania. Didn't

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 explain that.

2 Mr. Brickfield said it doesn't make any
3 sense that you would conspire with people you don't even
4 know. But apparently Mr. Mazza will contract with and
5 just ship materials to somebody he doesn't even know,
6 somebody he doesn't research? Likewise, we're now
7 hearing a lot of argument now that -- where's John Deck.
8 I'm going to -- let me -- I'm going to limit my next
9 comment to the Mazza defendants.

10 Ladies and gentlemen, in this case, as the
11 judge has told you, United States has this sole burden of
12 proof, which burden we gladly accept. We have done that
13 consistently. But just because the United States has a
14 burden doesn't mean the defendants do not have the
15 ability to call a witness if they wish, despite having no
16 burden to do so. If they thought John Deck was going to
17 help their case that much, they could have called him to
18 testify themselves.

19 Likewise, out of all of Mazza & Sons
20 employees, only Dominick Mazza himself testified about
21 the type and size of the waste that was produced. If it
22 was true that Mazza & Sons produced only waste
23 inconsistent with what they found dumped illegally at
24 Frankfort, New York, they could have easily called other
25 witnesses to say so. Why didn't that happen?

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 Bring you the obstruction. I think it was
2 Mr. Zeller said why didn't they bring in the whole
3 collection of these thousands of manifests? Well, you
4 heard the investigator -- you heard the testimony of
5 Investigator Clarke who spent days going through these
6 manifests. They still want us to bring thousands and
7 thousands of pages to you of irrelevant documents, stuff
8 that we readily admit is completely irrelevant.

9 They also said that while the government
10 had forms 1106 and 1109 -- listen carefully to Judge Hurd
11 when he explains what the requirements are for
12 obstruction. Didn't need to be a successful obstruction.
13 Didn't even need to be a -- there didn't even need to be
14 a likelihood of success. Just because it was a poor plan
15 to obstruct doesn't mean it wasn't an obstruction.

16 Likewise, the investigator took two
17 copies, DeSimone had another. There's one more left. At
18 least one more because the copy they have was a
19 photocopy, that says you -- that Mazza and Son
20 Corporation was making photocopies of those documents as
21 well.

22 They asked a question during their
23 closing. Why do you hide something when you've spoken to
24 the feds? That was a quote I believe from Mr. Zeller or
25 Mr. Brickfield. Well, you hide something when you spoke

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 to the feds because you need to substantiate the lies
2 that you told the feds. Mr. Zeller commented New Jersey
3 DEP can come on the facility whenever they want and I'm
4 not sure what he means by that. Apparently it's New
5 Jersey's DEP's fault they didn't go to Mazza & Sons to
6 check and start comparing the documents that were already
7 provided against what's in the Mazza files? That's what
8 they're asking? They can't just rely on what Mazza &
9 Sons is transmitting to them?

10 Make a comment that the government didn't
11 tell you about South Plainfield. Well, the forms that
12 correspond to South Plainfield are in a government
13 exhibit. We did bring that to you. We did make you
14 aware of it. Those documents were also turned over to
15 the defendants in the course of reciprocal discovery.
16 This wasn't a surprise.

17 As to the Superfund count, they pose a
18 question. Can you say anything or can you say without
19 any hesitation that those two piles belong to Mazza &
20 Sons, Inc.? I'm going to go through this one more
21 painful time. You have two law enforcement eyewitnesses.
22 You've got the moments after the Mazza & Sons shipments
23 were dumped, directed the drivers to go stand by the
24 piles, took a picture, checked the back of the cabs to
25 see if they were empty, took the manifests 1106 and 1109,

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 and Mazza is still in here saying those aren't our piles.
2 That's incredible, folks. That is absolutely incredible.
3 And, likewise, lest we forget, Dominick Mazza told
4 federal agents in October 2008 he admitted that he sent
5 two shipments up there that morning.

6 Make a comment that Mazza doesn't grind
7 his construction/demolition debris and that there's no
8 grinders. Quite contrary. There's a photograph of one
9 of those horizontal grinders. You've got a New Jersey
10 DEP inspector talking about the fact that every time she
11 went there, they were using grinders to put through
12 things other than wood.

13 Sampling. They make a quote, the
14 government wants you to infer that the whole load was
15 contaminated based on one sample. We're not asking you
16 to do that at all, folks. We don't need to prove the
17 whole load was contaminated or the whole load wasn't. We
18 need to prove one pound was asbestos. Just one out of
19 the 80,000-plus pounds that were in those two piles.
20 Sampling is more than sufficient complied with any NEIC
21 standards, it's perfectly out of here.

22 They made a comment that Derx got seven
23 samples wrong. This isn't a quiz, folks. This isn't a
24 test. Special Agent Derx testified that when you go to a
25 site, you're trying to characterize the materials, you

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 take -- you want to know what you're dealing with. He
2 didn't know what he was dealing with with a lot of those
3 samples, so he collected representative samples. This
4 isn't a test. This isn't a failure of Special Agent
5 Derx. It was a -- it was actually a very thorough job to
6 make sure they were getting samples of representative
7 materials.

8 Likewise, their own witness, Jack Gall,
9 said that transite becomes friable when it's put through
10 grinders. That's the evidence. They pose a question.
11 What evidence was there that Dominick Mazza knowingly
12 shipped asbestos? Well, again, folks, we have been over
13 this, Delaware Recycling rejections, they go to that.
14 Fulton William said there were other samples that tested
15 positive. Dominick Mazza was well aware of it and they
16 are still trying to minimize it. They said -- during
17 their summation they said, quote, despite their best
18 efforts, occasionally they get a few pieces. Well, why
19 is it Fulton Williams that's telling you they are finding
20 hundreds of pounds of suspect material that he believes
21 was friable at the bottom of shipments?

22 False statements. We will go to that.
23 You heard the story change again. During the testimony
24 of Dominick Mazza yesterday he claimed no, no, no. I
25 recanted and I told the investigator they were Delaware

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 rejections in August before they showed me the documents
2 and now you heard Mr. Brickfield back up and say,
3 actually, they did show him the documents first. That
4 story keeps changing, folks. Continues to change.

5 They also said Mr. Mazza is a, quote, very
6 busy man. I'm not sure what that means, folks. He's too
7 busy to tell the truth? He's too busy to be accurate
8 when he's talking to federal agents? He admitted at the
9 meeting with federal agents that he was aware of the
10 November Delaware rejections. They didn't ask him about
11 the sample. They didn't say, "Are you aware of sampling
12 coming back?" They asked him specifically about if he
13 had any loads rejected after October 2006 and he said no.

14 And you heard Mr. Brickfield say something
15 completely inconsistent with the evidence. You heard him
16 say that Dominick said he didn't know, he wasn't sure.
17 That's not what he said. He made a definitive no, I
18 didn't have any rejections after October 2006.

19 Lastly, I'm going to leave you with --
20 during his testimony yesterday Dominick Mazza had no
21 explanation whatsoever for why it is documents going
22 under the environmental agency omitted the Frankfort
23 shipments. He didn't talk about that at all. He ran
24 away from that, folks. He didn't want to talk about that
25 with you at all. The Monmouth County forms show Tannery

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

U.S. v DeSimone, et al. - 11-CR-264

1 Road but again, folks, as I told you this morning,
2 Monmouth County forms say revised. They have no idea
3 when they were that was filed and it didn't go to an
4 environmental agency. Why isn't it the same exact
5 documents, folks? Why are they revising it? And that
6 comes to the common theme depending on what form, what
7 recipient, what they're doing about, documents change and
8 substance of what's reported to changes. That's the M.O.
9 here.

10 So here's the takeaways. Please, please,
11 please disregard the excuses, the banter between the
12 attorneys, the arguments. Focus on the evidence. The
13 fundamental agreement, folks, is to illegally dump for
14 money and the landfill was illegal if it accepted clean
15 fill in wetlands, if it had contained contaminated
16 materials, if it was within 50 feet of South Side Road,
17 if it was within a hundred feet of waterways, and last
18 but not least, if there was any money being exchanged for
19 the dumping, that was an illegal landfill and there was
20 an agreement to make an illegal landfill. If any one of
21 those are true, it was an illegal landfill; doesn't need
22 to be all of them. Can be just one of those things.
23 That's what the evidence showed in this case and,
24 frankly, that's all that matters.

25 Defendants say this is important case.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

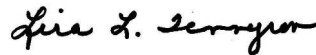
U.S. v DeSimone, et al. - 11-CR-264

1 They said it over and over. It's very important to
2 Dominick Mazza and his family and they're right. This is
3 an important case, but it is also important to this
4 community. A community that now has to deal with a
5 Superfund site in its backyard. The judge will instruct
6 you to consider the facts and the law. He's right.
7 Consider only the facts and the law and, folks, you do
8 that here, there's only one conclusion to be reached and
9 that's guilt beyond a reasonable doubt as to all counts
10 and against all defendants. Thank you, folks.

11 * * * * *

12
13
14 C E R T I F I C A T I O N

15
16 I, Lisa L. Tennyson, RMR, CSR, CRR, Official Court
17 Reporter in and for the United States District Court,
18 Northern District of New York, hereby certify that the
19 foregoing 20 pages taken by me to be a true excerpt to
20 the best of my ability.

21
22 

23 Lisa L. Tennyson, R.M.R., C.S.R., C.R.R.

24
25
Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY